

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Misc: Application No. S-238 of 2025

Applicants: Muneer Ahmed and others through Syed Zafar Ali Shah Bukhari, Advocate.

Respondent: Nemo

Respondent: The State, *through*
Mr. Mansoor Hussain Shaikh,
Deputy Prosecutor General

Date of hearing : 13.07.2026
Date of order : 13.07.2026.

ORDER

ARBAB ALI HAKRO, J.- Through the present Criminal Miscellaneous Application under Section 561-A, Cr.P.C., the applicants seek setting aside of the impugned order dated 26.03.2025 passed by the learned Sessions Judge, Naushahro Feroze, whereby their application under Section 265-K, Cr.P.C. in Session Case No.754 of 2024, arising out of a direct complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005 was dismissed.

2. The relevant facts of the case are that Respondent No.2, through his attorney, instituted a direct complaint under Section 3(2) of the Illegal Dispossession Act, 2005, alleging ownership of agricultural land admeasuring 03-02 ½ acres situated in Survey Nos. 680, 733, 734, 740 and 681 of Deh Shahmeer Dero, Taluka Kandiaro, District Naushahro Feroze, purportedly purchased through a registered sale deed dated 10.11.2023. It was alleged that on 07.01.2024 at about 5:00 p.m., the applicants entered the land, damaged the standing wheat crop with a tractor, issued threats, and forcibly occupied the property. Upon filing the complaint, the learned trial Court called for reports from the SHO and the Mukhtiarkar concerned. The SHO submitted statements recorded under Section 161, Cr.P.C., while the Mukhtiarkar

furnished entries of Form VII-A and VII-B showing mutation in favour of the complainant. Cognizance was thereafter taken, and NBWs were issued, after which the applicants obtained bail. The applicants moved an application under Section 265-K, Cr.P.C., asserting that the matter was purely civil in nature, that the Section 161 statements did not support the allegation of dispossession, and that civil litigation between the parties, including Civil Revision No. 42 of 2022, was already pending. The learned trial Court dismissed the application by the impugned order dated 26.03.2025.

3. Learned counsel for the applicants submits that the impugned order is unsustainable because the learned trial Court failed to appreciate that the basic ingredients of the offence under the Illegal Dispossession Act were wholly absent from the material on record. It is argued that the statements recorded under Section 161, Cr.P.C. do not allege dispossession or occupation by the applicants, and that the SHO's report does not support the complainant's version. Learned counsel further contends that the dispute between the parties is admittedly civil in nature, as evidenced by pending civil proceedings, including Civil Revision No.42 of 2022, and that the complainant has been litigating through an attorney despite settled law that criminal proceedings through an attorney are incompetent. It is urged that the applicants have already been acquitted, or that FIRs have been quashed in earlier litigations initiated by the complainant's attorney, which demonstrates mala fide and abuse of process. Learned counsel maintains that, once the material on record does not disclose any probability of conviction, the learned trial Court was bound to exercise jurisdiction under Section 265-K, Cr.P.C., but instead dismissed the application without proper consideration of the record.

4. Conversely, learned D.P.G. supports the impugned order and submits that once cognizance is taken under Sections 3 and 4 of the Illegal Dispossession Act, 2005, the complaint cannot be summarily dismissed under Section 265-K, Cr.P.C. It is argued that the question of ownership and possession is disputed between the parties and can only be resolved after recording evidence, as both sides claim title to the land. Learned A.P.G. contends that the trial court rightly relied on precedents holding that the

pendency of civil litigation does not bar proceedings under the Illegal Dispossession Act when allegations of forcible occupation are made. It is further submitted that a deeper appreciation of the evidence is impermissible at the Section 265-K, Cr.P.C. stage, and that the applicants have failed to demonstrate that the charge is groundless or that there is no probability of conviction. Learned A.P.G. therefore prays for dismissal of the present application.

5. Heard and perused the material available on record. The record shows that the complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005, was instituted by an attorney, not by the complainant himself. This legal defect goes to the root of jurisdiction. In the case of **Muhammad Qasim**¹. This Court has categorically held that an attorney cannot act as a complainant in criminal proceedings under the Act, for the criminal process recognises only those persons as complainants or witnesses who have personally seen, heard or perceived the occurrence. The complaint under the Act is equated with an FIR and therefore must be made by the owner or occupier himself. The present complaint, being filed through an attorney, is thus legally incompetent.

6. The Mukhtiarkar's report confirms mutation in favour of the complainant but also records that the land is uncultivated, which materially undermines the allegation of destruction of the standing wheat crop. The statements recorded under Section 161, Cr.P.C. do not establish the complainant's settled possession, nor do they show dispossession within the meaning of Section 3 of the Act. The statutory ingredients of illegal dispossession are therefore not satisfied.

7. The dispute between the parties is deeply rooted in civil litigation, including Civil Revision No. 42 of 2022, pending before this Court. Multiple prior FIRs lodged by the complainant's attorney have resulted in acquittals or quashment. This pattern reveals a long-standing civil feud rather than forcible dispossession by the land mafia.

8. The Learned Trial Court declined relief under Section 265-K, Cr.P.C., on the premise that the charge had been framed and that evidence was yet to be recorded. However, Section 265-K, Cr.P.C., obliges the Court to acquit

¹ Muhammad Qasim v. SHO P.S. Khudabad **2016 MLD 1238**

where the material shows no probability of conviction. The refusal to consider the complaint's legal incompetence, the absence of statutory ingredients, and the civil nature of the dispute amounts to a misapplication of jurisdiction. The Supreme Court has clarified that mere taking of cognizance is not a lawful ground to refuse quashment where continuation of proceedings would constitute abuse of process².

9. On the cumulative assessment of the record, the complaint is legally defective, the statutory ingredients of the offence are missing, and the dispute is essentially civil. Continuation of proceedings under the Illegal Dispossession Act would therefore amount to an abuse of process and would not secure the ends of justice.

10. For the foregoing reasons, the impugned order dated 26.03.2025 passed by the trial Court is set aside. The complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005, being legally incompetent and devoid of the essential statutory ingredients, is hereby quashed, and the applicants are acquitted under Section 265-K Cr.P.C. The Criminal Miscellaneous Application stands allowed.

JUDGE

S.Nawaz(St)

² Aurangzaib Alamgir vs. Muhammad Sajid and others **PLD 2025 Supreme Court 53.**