

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Revision Application No.S-23 of 2025

[Muhammad Saleem v. Abdul Khalil and others]

Applicant by : Mr.Harish Chander, Advocate
Respondent No.1 by : Mr. Ghulam Saeed Arain, Advocate
Respondent No.2 by : Nemo.
Respondents No.3 and 4 by : Mr. Neel Parkash, D.P.G.
Date of hearing : **13.04.2026**
Date of decision : **13.04.2026**

ORDER

ARBAB ALI HAKRO, J.- The present Criminal Revision arises from proceedings initiated by the applicant Muhammad Saleem, who asserts himself to be the lawful purchaser and owner of agricultural land measuring 2-28 acres out of Survey No.215, situated in Deh Saangro, Tapo Kaak, Taluka Shujaabad, District Mirpurkhas. It is averred that the that the applicant acquired the said land through a registered sale deed bearing No.3102 dated 26.05.2011, executed by Abdul Khalil and the late Arz Muhammad, father of respondent No.2. The entry of mutation was duly incorporated in the revenue record vide Entry No.18 of VF-VII-B dated 04.07.2011, wherein the applicant was recorded as transferee. The sale deed, as reproduced in the civil litigation, records that the vendors, upon receipt of the sale consideration, sold the suit land to the private respondent with delivery of possession.

2. The record further reveals that soon after the execution of the sale deed, the vendors instituted F.C. Suit No.156 of 2012 seeking declaration, cancellation of the sale deed and permanent injunction, alleging that the document was not a sale deed but a lease deed procured by fraud. Learned Senior Civil Judge, Mirpurkhas, after recording evidence of both sides, dismissed the suit on 14.12.2015, holding inter alia that the plaintiffs had

failed to discharge the burden of proving fraud and that the registered sale deed carried the presumption of correctness. The appellate court dismissed Civil Appeal No.04 of 2016 on 07.10.2016. The subsequent Civil Revision No.319 of 2016, filed by the vendors before the High Court, was also dismissed on 11.12.2023.

3. The applicant's case before the trial court was that despite losing the civil litigation at all forums, the respondents continued to interfere with his proprietary rights, issued threats and attempted to re-enter the land. The applicant had earlier lodged FIR No. 49 of 2012, while a counter-FIR No. 53 of 2012 was registered by the respondents' relatives; both matters were later compromised on 08.12.2012. The applicant further asserted that after the floods of 2022, when the land again became cultivable, the respondents forcibly dispossessed him on 12.12.2023 in the presence of witnesses, thereby committing an offence under the Illegal Dispossession Act, 2005.

4. Upon filing of I.D Complaint No.08 of 2025, the learned Additional Sessions Judge-II, Mirpurkhas, called for reports from the Station House Officer and the Mukhtiarkar, Shujaabad. The SHO submitted his report on 11.02.2025, while the Mukhtiarkar furnished report No.SM/73/2025 dated 10.02.2025, wherein the revenue officer confirmed the applicant's title through Entry No.18 of VF-VII-B. Upon examining the material, the trial court observed that the applicant himself had acknowledged the pendency of civil litigation and that the filing of the civil suit by the vendors indicated that they had remained in possession. The court also noted the delay between the alleged dispossession on 12.02.2023 and the filing of the complaint on 28.01.2025. It held that the narrative of dispossession does not appeal to a prudent mind, and that there was no prima facie evidence to show that the complainant owns or lawfully occupies the property, or that he has been illegally dispossessed. The complaint was accordingly dismissed at the preliminary stage on 16.04.2025.

5. Aggrieved by the dismissal of his complaint, the applicant invoked the revisional jurisdiction of this Court through the instant Criminal Revision.

6. Learned counsel for the applicant contended that the impugned order suffers from a manifest misreading and non-reading of material evidence, inasmuch as the learned trial court failed to appreciate that the applicant's title stood conclusively affirmed through a registered sale deed dated 26.05.2011 and mutation Entry No.18 of VF-VII-B dated 04.07.2011. It was argued that the civil courts, including the appellate court and the revisional court, had already adjudicated on the validity of the sale deed and rejected the respondents' plea of fraud. Learned counsel emphasised that the appellate court had categorically held that possession goes with the title, which at present is with the private respondent; if possession is with the appellants, it is illegal, and their status is nothing more than that of trespassers. According to him, this judicial declaration alone was sufficient to establish the applicant's lawful possession and to negate the respondents' claim of occupancy. Learned counsel further submitted that the learned trial court erred in placing reliance upon the revenue report regarding possession, even though the same report simultaneously confirmed the applicant's title. It was argued that the respondents' alleged possession was itself the product of the very illegal dispossession complained of and therefore could not be used to defeat the statutory protection afforded under the Illegal Dispossession Act, 2005. Learned counsel maintained that the applicant had been forcibly dispossessed on 12.12.2023 in the presence of witnesses and that the delay in filing the complaint was neither fatal nor indicative of mala fides, particularly when the applicant had been pursuing civil remedies and repeatedly approaching authorities for protection. He submitted that the trial court dismissed the complaint at the threshold without recording evidence, thereby depriving the applicant of an opportunity to substantiate his claim through ocular and documentary proof. Learned counsel concluded that the impugned order is perverse, contrary to the settled principles governing cognisance under the Illegal Dispossession Act and liable to be set aside, with directions to the trial court to admit the complaint and proceed in accordance with law.

7. Conversely, learned counsel for respondent No.1 supported the impugned order and submitted that the applicant's revision is misconceived and beyond the permissible scope of revisional jurisdiction. He argued that the dispute between the parties is essentially civil in nature, arising out of competing claims to possession and that the applicant has attempted to convert a civil controversy into a criminal proceeding by invoking the Illegal Dispossession Act. Learned counsel referred to the pleadings in the civil suit to assert that the respondents had consistently maintained possession of the land and had never delivered possession to the applicant. He submitted that the applicant's assertion of dispossession on 12.12.2023 is a fabricated narrative, belied by the revenue report and unsupported by any contemporaneous complaint. Learned counsel further argued that the complaint was filed on 28.01.2025, more than a year after the alleged dispossession, which renders the claim inherently doubtful. According to him, the trial court correctly exercised its jurisdiction and declined to take cognizance in accordance with the statutory scheme. He therefore prayed for dismissal of the revision.

8. Learned D.P.G., appearing for the State, adopted the reasoning of the trial court and submitted that the impugned order does not suffer from any legal infirmity warranting interference. He argued that the SHO's report, as well as the revenue report, indicated that the respondents were in possession of the land at the relevant time and that the applicant had failed to demonstrate any immediate or recent act of dispossession. Learned D.P.G. submitted that the applicant's remedy, if any, lies before the civil court and that the criminal machinery cannot be invoked to settle civil scores. He therefore supported the dismissal of the complaint.

9. Heard. Perused the record.

10. The controversy which falls for determination in this Criminal Revision lies within a narrow but legally significant compass: whether, on the material placed before it, the learned Additional Sessions Judge-II, Mirpurkhas, was justified in declining to take cognizance under the Illegal Dispossession Act, 2005, and dismissing the complaint at the threshold;

and, corollary thereto, whether the impugned order suffers from any illegality, material irregularity or perversity warranting interference in revisional jurisdiction.

11. Before advertng to the factual matrix, it is apposite to recall the statutory scheme. The Illegal Dispossession Act, 2005, is a special enactment "promulgated to discourage the land grabbers and to protect the right of owners and the lawful occupants of the property as against the unauthorised and illegal occupants" (**PLD 2007 SC 423; 2012 SCMR 229**). Section 3(1) prohibits any person from entering upon 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 owners or occupiers of such property." Section 3(2) prescribes punishment and compensation. Section 4 vests exclusive cognizance in the Court of Session on a complaint and declares the offence non-cognizable. Section 5(1) provides that "upon a complaint the Court may direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court," while subsection (2) mandates expeditious trial once cognizance is taken.

12. The Supreme Court has repeatedly underscored that the Act is to be construed as a special, self-contained code in its own field. In case of **Mst.Inayatan Khatoon**¹, it was held that the Act "itself is a special law and overrides the provisions of Code of Criminal Procedure in terms of section 4," that a complaint under the Act "could be equated as complaint under section 154, Cr.P.C, whereas report under section 5(1) could be equated as report under section 173 Cr.P.C" and that proceedings thereunder cannot be assimilated to a private complaint under section 200 Cr.P.C. The trial court, therefore, is not required to follow the procedure of examining the complainant on oath under section 200, Cr.P.C., nor to treat the complaint as one triable by a Magistrate; rather, it is to act within the four corners of sections 3, 4 and 5 of the special law.

¹ Mst. Inayatan Khatoon v. Muhammad Ramzan (2012 SCMR 229)

13. Equally, in the case of **Rahim Tahir**², the apex Court reiterated that “all cases of illegal occupants without any distinction would be covered by the Act, except the cases which were already pending before any other forum” and clarified that the expressions “grab, control or occupy” in section 3 are not confined to post-Act entrants but extend to all illegal and unauthorised occupants, subject only to the exception of matters already sub judice elsewhere. The thrust of these pronouncements is that the Act is remedial and protective in nature, designed to shield lawful owners and occupiers from land grabbers and is to be applied purposively.

14. However, the same jurisprudence also imposes a clear threshold for assumption of criminal jurisdiction. In the case of **Waqar Ali**³ The Supreme Court held that, to constitute an offence under section 3, the complaint must disclose both an unlawful act (*actus reus*) and criminal intent (*mens rea*). The Supreme Court emphasised that the Sessions Court, when seized of a complaint under the Act, “is required to act as a sieve and to filter out those complaints which do not disclose the requisite criminal intent” and that the Court “need not order investigation under section 5 of the Act if it concludes from the complaint and the material furnished by the complainant in support thereof, that all essential elements of an offence under section 3 *ibid* are or are not, sufficiently disclosed and established.” It was further held that the power under section 5 “has to be exercised judicially and not as an unconsidered or mechanical action” and that the Court is not to become “a party in gathering information or evidence in support of the complaint to justify the existence of *mens rea* when none can be made out from the complaint itself.”

15. Against this statutory and precedential backdrop, the applicant’s complaint and the impugned order may now be examined. The applicant’s foundational assertion is that he is the lawful owner of 2-28 acres out of Survey No.215, Deh Saangro, Tapo Kaak, Taluka Shujaabad, by virtue of registered sale deed No.3102 dated 26.05.2011 and mutation Entry No.18

² Rahim Tahir v. Ahmed Jan (PLD 2007 SC 423)

³ Waqar Ali v. The State (PLD 2011 SC 181)

of VF-VII-B dated 04.07.2011 and that possession was delivered to him at the time of sale. The vendors challenged this title through F.C. Suit No.156 of 2012, Civil Appeal No.04 of 2016 and Civil Revision No.319 of 2016, all of which culminated in the dismissal of their challenge. The appellate judgment, in particular, observed that "the possession goes with the title, which at present is with the private respondent. If, for the sake of argument, it is believed that the possession of the suit land is with the appellants, then it is illegal and their status over it is nothing more than that of a trespasser." The applicant relies heavily on this observation to contend that any possession of the respondents is ipso facto illegal and that his dispossession, as alleged on 12.12.2023, falls squarely within section 3.

16. Learned trial court, upon receipt of ID Complaint No.08 of 2025, did not act mechanically. It invoked section 5(1) of the Act and called for reports from the SHO P.S. Taluka Mirpurkhas and the Mukhtiarkar (Revenue), Shujaabad. The Mukhtiarkar's report is of particular significance; it confirms the applicant's title by reciting that Abdul Khalil and Arz Muhammad sold their respective shares, totalling 2-28 acres, to Muhammad Saleem through registered sale deed No.3102 dated 26.05.2011, duly reflected in Entry No.18 of VF-VII-B dated 04.07.2011. However, the same report proceeds to State that "the above said land is under possession of Abdul Khalil s/o Ali Bux and Khuda Bux s/o Araz Muhammad and others." The SHO's report, as summarised in the impugned order, also indicated that the land was in the possession of a third party, Muhammad Aijaz Arain, since 2021, and that the question of ownership was sub judice before the civil court.

17. Learned Additional Sessions Judge, after hearing learned counsel for the complainant and examining the complaint, annexures and the two reports, recorded several findings. He noted that the applicant himself had acknowledged the pendency of civil litigation between the parties and had annexed the civil court judgments. He observed that the very filing of the civil suit by the vendors indicated that they had remained in possession of the suit property. He further noted that, while the applicant alleged dispossession on 12.12.2023, he filed the complaint only on 28.01.2025 and

did not, in the interregnum, approach any competent forum for immediate redress. Most crucially, he held that the narrative of dispossession "does not appeal to a prudent mind," that there was "no prima facie evidence to show that the complainant owns or lawfully occupies the property and that he has been dispossessed illegally", and that in such circumstances, no cognizance could be taken under the Act.

18. The applicant's principal grievance is that the trial court, while correctly articulating the test that a complainant must prima facie show ownership or lawful occupation and illegal dispossession, misapplied that test by ignoring the registered sale deed, the mutation entry and the civil court decrees and by placing undue reliance on the revenue report regarding possession. It is urged that, once title and declaratory decrees stand in his favour, the presumption must be that possession follows title and any contrary possession is illegal and falls within the mischief of section 3. It is further argued that the trial court erred in dismissing the complaint at the preliminary stage without recording evidence, thereby foreclosing the applicant's opportunity to prove his dispossession through witnesses.

19. These submissions, though not devoid of force at first blush, cannot be examined in isolation from the precise requirements of section 3 as judicially interpreted. The Act does not criminalize every civil trespass or every dispute over possession. As Waqar Ali's case makes clear, the complaint must, on its own terms and supporting material, disclose an unlawful entry or occupation coupled with the requisite *mens rea* and intention "to dispossess, grab, control or occupy" the property of the owner or lawful occupier. The Sessions Court is not bound to accept at face value a bald assertion of dispossession; it must scrutinize the complaint and the annexed material to see whether the essential ingredients of the offence are prima facie made out. If they are not, the Court is not only entitled but duty-bound to decline cognizance and thereby prevent the criminal process from being used as a lever in essentially civil disputes.

20. In the present case, the applicant's title is indeed fortified by the registered sale deed and the civil decrees. That, however, is only one limb

of the inquiry. The second limb is whether, at the time of the alleged dispossession on 12.12.2023, the applicant was in actual, lawful possession and whether the respondents, with the requisite criminal intent, entered upon and dispossessed him. On this aspect, the material is far from clear. The complaint itself acknowledges that, due to heavy rains and floods in 2022, the land remained uncultivable and vacant for some time. It then asserts that after the dismissal of the civil revision in December 2023, when the land became cultivable, the applicant attempted to cultivate it but was restrained and then forcibly dispossessed on 12.12.2023. There is, however, no contemporaneous complaint to any authority on or around that date; no FIR, no application to the police or revenue authorities and no interim civil proceedings seeking urgent protection of possession. The first formal invocation of the Act comes more than a year later on 28.01.2025.

21. The revenue report, obtained under section 5(1), does not support the applicant's assertion of possession at the relevant time. On the contrary, it records that the land is under the possession of Abdul Khalil, Khuda Bux, and others, whereas the SHO's report suggests that a third party, Muhammad Aijaz Arain, has been in possession since 2021, and that the matter of ownership is sub judice. These reports may not be conclusive, but they are prima facie relevant indicators that the trial court was entitled to consider at the stage of deciding whether to take cognizance. When such reports, read in light of the admitted history of civil litigation and the absence of any immediate complaint of dispossession, are juxtaposed with the bare assertion of dispossession in the complaint, the trial court's conclusion that the story "does not appeal to a prudent mind" cannot be branded as perverse.

22. The applicant's reliance on the appellate court's observation that "possession goes with the title" and that any possession of the appellants (now respondents) would be illegal must also be viewed in the proper context. That observation was made in the course of deciding a civil appeal concerning the validity of the sale deed and the declaratory relief sought by the vendors. It was not a definitive adjudication of actual physical

possession on a particular date, nor did it purport to resolve all future disputes of possession inter se the parties or vis-à-vis third parties. The Supreme Court in **the Waqar Ali** case has cautioned that the Act is not to be used to "perpetuate the possession of illegal occupants," but also not to be invoked to convert every boundary or demarcation dispute into a criminal prosecution. The mere fact that the respondents' possession may be characterised as "illegal" in a civil sense does not, without more, satisfy the criminal threshold of section 3.

23. In the present case, there is a long-standing civil dispute, a history of cross-litigation, a period of non-cultivation due to floods, a third-party possessor and a significant delay in complaining of dispossession. In such circumstances, the trial court was entitled to treat the matter as predominantly civil and to decline to initiate the criminal process under the Act.

24. The interpretation of section 5 of the Act, in this context, assumes particular importance. The provision is enabling, not mandatory. It authorises the Court "upon a complaint," to direct the police to investigate and report within fifteen days. It does not oblige the Court to order an investigation in every case, nor does it require the Court to take cognisance merely because a complaint has been filed. As the Supreme Court held in **Waqar Ali**, the power under section 5 "can only be exercised on the basis of and after considering the contents of the complaint." The purpose of the investigation is "to ascertain prima facie, the authenticity of what has been stated in the complaint," not to supplement or cure deficiencies in the complaint. The Court may, on the strength of the complaint and the material furnished, including any report obtained under section 5, either take cognizance or decline to do so. In the present case, the trial court did precisely what the law envisages: it called for reports, evaluated them along with the complaint and annexures and then formed the opinion that the essential ingredients of the offence were not prima facie established. That is a judicial exercise of discretion, not an abdication of jurisdiction.

25. The revisional jurisdiction of this Court is supervisory and corrective, not appellate. It is not open to this Court, in revision, to re-appraise the entire factual matrix as if sitting in appeal or to substitute its own view merely because another view is possible. Interference is warranted only where the impugned order is shown to be illegal, without jurisdiction, or so grossly perverse as to occasion a miscarriage of justice. In the present case, the trial court correctly identified the legal test, invoked the proper statutory provisions, obtained the reports contemplated by section 5, and then, on a plausible appreciation of the material, concluded that no prima facie case under section 3 was made out. Whether this Court, if seized of the matter at first instance, might have been inclined to admit the complaint and record evidence is beside the point; the question is whether the trial court's refusal to do so is so unreasonable or legally flawed as to justify revisional correction. On the record as it stands, the answer must be in the negative.

26. At the same time, it must be emphasised that the dismissal of the complaint under the Illegal Dispossession Act does not denude the applicant of all remedies. The impugned order itself reserves liberty to the applicant to avail an appropriate remedy for redressal of his grievance. The applicant remains entitled to pursue his civil rights before the competent civil court, including any suit for possession, injunction or mesne profits and to seek such interim protection as the civil law affords. Nothing in this judgment shall be construed as an expression of opinion on the merits of any such civil proceedings, nor as a determination of title or possession inter se the parties or vis-à-vis any third party.

27. In sum, the Act is a potent but exceptional instrument, intended to strike at land grabbers and to protect lawful owners and occupiers from criminal usurpation. It is not a substitute for the ordinary civil jurisdiction, nor a device to criminalise every contested possession. The Sessions Court, acting under sections 3, 4 and 5, must balance the remedial purpose of the Act with the safeguards inherent in criminal law, ensuring that only those complaints which disclose, on their face and supporting material, the

essential elements of the offence proceed to trial. In the present case, the trial court's refusal to take cognizance falls within that permissible zone of judicial discretion and does not call for interference.

28. For the foregoing reasons, this Criminal Revision is **dismissed**. The impugned order dated 16.04.2025, passed by the learned Additional Sessions Judge-II, Mirpurkhas, is maintained. The applicant shall, however, be at liberty to seek such civil or other remedies as may be available to him under law, and any court seized of such proceedings shall decide the same on their own merits, uninfluenced by any observation contained herein.

JUDGE

Saleem