

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Revision Application No.S- 72 of 2025

Applicants : Muhammad Tagial & 08 others through Mr. Abdul Baqi Jan Kakar, Advocate.

Respondent : Shafi Muhammad through M/s Sardar Akbar F. Ujjan & Mahmood Ahmad Ujjan, Advocates a/w respondent.

The State : Through Mr. Imran Mobeen Khan, Assistant Prosecutor General.

Date of Hearing : 18-09-2026

Date of Order : 08-10-2026

ORDER

TASNEEM SULTANA, J.- Through this Criminal Revision Application under Sections 435 and 439, Cr.P.C., the applicants have called in question the order dated 01.08.2025 passed by the learned Additional Sessions Judge, Gambat, in Criminal Complaint No.123 of 2024 under Sections 3 and 4 of the Illegal Dispossession Act, 2005, whereby the learned trial Court took cognizance and issuedailable warrants against the applicants for securing their attendance.

2. Brief facts of the case of respondent/complainant Shafi Muhammad are that he claims ownership and possession of agricultural land measuring 2-16 acres out of Survey No.653, situated in Deh Siyal Pathan, Taluka Gambat, District Khairpur, through registered sale deed dated 27.12.2007. According to him, after earlier litigation between the parties, he remained in possession of the land and had cultivated sugarcane crop thereon. He alleged that on 23.03.2024, when he, accompanied by his witnesses and tenants, went to the land, the applicants were found present there and restrained them from entering upon it by asserting their possession. It was further alleged that the applicants extended threats, cut away sugarcane crop kept as seed and did not allow the complainant and his tenants to harvest the remaining crop. He thereafter filed the subject complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005.

3. The learned trial Court, before taking cognizance, called reports from the Mukhtiarkar and SHO concerned. The Mukhtiarkar submitted his

report on the basis of the revenue record and report of the Tapedar. Upon appraisal of the complaint and the material available before it, the learned trial Court formed a prima facie view and, vide impugned order dated 01.08.2025, took cognizance and issued bailable warrants against the applicants.

4. Learned counsel for the applicants contended that the same property has remained the subject matter of repeated criminal and civil proceedings between the parties; that Criminal Complaint No.36 of 2016 had earlier culminated in conviction of some of the applicants, which was set aside by this Court vide judgment dated 19.03.2024 in Criminal Appeal No.S-71 of 2021; that while allowing the said appeal, this Court also recalled the orders dated 12.09.2022 and 26.09.2022 under which possession had earlier been restored to the complainant; that another Criminal Complaint No.69 of 2022 relating to the same property was also dismissed; that civil proceedings concerning the same land are still pending; that the question of possession remains seriously disputed; that repeated criminal proceedings over the same property amount to abuse of process; and that the impugned order is, therefore, liable to be set aside.

5. Conversely, learned counsel for respondent/complainant supported the impugned order and contended that the present complaint relates to a subsequent occurrence dated 23.03.2024, stated to have taken place after decision of Criminal Appeal No.S-71 of 2021; that the registered sale deed in favour of the complainant has not been cancelled; that the earlier suit seeking declaration and cancellation thereof and the appeal arising therefrom were dismissed; that the reports obtained by the learned trial Court support the complainant's claim of prior possession and subsequent dispossession; that pendency of civil proceedings does not by itself bar proceedings under the Illegal Dispossession Act, 2005; and that the material available before the learned trial Court was sufficient for taking cognizance. Learned D.P.G. supported the impugned order.

6. Heard. Record perused.

7. The Illegal Dispossession Act, 2005 is a special enactment providing a remedy against illegal and forcible dispossession from immovable property. For attracting Section 3 of the Act, the complainant is required, at

the prima facie stage, to show that he is the lawful owner or was the lawful occupier of the property and that the accused entered into or upon such property without lawful authority, with the intention to dispossess, grab, control or occupy it. At the stage of taking cognizance, the Court is not required to determine the accusation on the standard applicable after recording evidence; however, the complaint and the material produced in its support must disclose the essential ingredients of the offence.

8. In Waqar Ali and others v. The State through Prosecutor/Advocate-General, Peshawar and others (PLD 2011 Supreme Court 181), the Hon'ble Supreme Court, while examining the scope of Sections 3 and 5 of the Act, observed that:

“10.....The power to direct an investigation under section 5 ibid is to be exercised judicially and not as an unconsidered or mechanical action undertaken on every complaint filed under the Act, regardless of the merits of the same. The purpose of the investigation under the aforesaid statute is to ascertain prima facie, the authenticity of what has been stated in the complaint. The complaint itself has to show that an offence cognizable by the Court has been committed by the accused person(s) named therein.....”

In the same judgment, the Hon'ble Supreme Court emphasized that an offence under Section 3 requires both an unlawful act and the requisite criminal intention. The controversy in Waqar Ali (supra), however, arose from uncertainty regarding the exact location and boundaries of adjoining parcels of land, while the complaint itself did not disclose the necessary criminal intent. The present complaint stands on a different footing. It attributes to the applicants entry upon the land, assertion of possession, prevention of the complainant and his tenants from entering thereon, threats and cutting away of the sugarcane crop. Taken at their face value for the limited purpose of cognizance, these allegations prima facie disclose the act complained of as well as the intention contemplated by Section 3 of the Act. Their truth or otherwise is a matter for determination at trial.

9. In Mst. Inayat Khan and others v. Muhammad Ramzan and others (2012 SCMR 229), the Hon'ble Supreme Court held that the Illegal Dispossession Act is a special law providing its own procedure and that a complaint thereunder cannot be equated with an ordinary private complaint to be processed under Section 200, Cr.P.C. It was further held that the Court, upon consideration of the report obtained under the Act and other

material available before it, may take cognizance in accordance with law. In the present case, the learned trial Court did not proceed merely upon filing of the complaint but called reports from the Mukhtiarkar and SHO concerned before taking cognizance. In Niaz Ahmed and another v. Aijaz Ahmed and others (PLD 2024 Supreme Court 1152), the Hon'ble Supreme Court reiterated that, in order to make out a case under Sections 3 and 4 of the Act, the complainant has to prima facie establish that he is the lawful owner or was the lawful occupier of the subject property; that the accused entered into or upon the property without lawful authority; and that the accused did so with the intention to dispossess, grab, control or occupy the property. It was also held that the Act is not confined to cases against land mafia or qabza groups and that mere pendency of civil litigation does not render proceedings under the Act incompetent.

10. It is also settled that jurisdiction under the Illegal Dispossession Act is confined to examining the alleged illegal dispossession and is not meant for final adjudication of competing title to immovable property. In Gulzar Ali and another v. Station House Officer, P.S. Kandiaro and others (PLD 2012 Sindh 390), the Court observed that:

“11. The aforesaid interim order on the face of it is misconceived which itself shows that the learned trial court was not satisfied regarding clean title of the property, otherwise, there was no occasion to mention in the order that the property will be handed over to the person who will clarify his title at the time of disposal of the direct complaint. Under Illegal Dispossession Act, it is not the function or dominion of the court to decide or adjudicate upon the title of the property in question. It is also strange that while passing the order for an interim relief, the trial court failed to consider subsections (1) and (2) of section 7, but the receiver/custodian was appointed in view of subsections (3) to (5) of section 7.”

11. Keeping the above principles in mind, the core question in the present revision is whether the complaint and the material available before the learned trial Court disclosed a prima facie case that the complainant was the lawful owner or was the lawful occupier of the property immediately before the occurrence dated 23.03.2024 and that the applicants entered upon or occupied the same without lawful authority and with the intention contemplated by Section 3 of the Act.

12. It appears from the record that the parties have remained in litigation concerning the same property for a considerable period. Criminal

Complaint No.36 of 2016 had resulted in conviction of some of the applicants and restoration of possession to the complainant. During pendency of Criminal Appeal No.S-71 of 2021, this Court, through orders dated 12.09.2022 and 26.09.2022, again caused possession of the disputed land to be restored to the complainant. The said appeal was ultimately allowed on 19.03.2024; the conviction was set aside, the appellants therein were acquitted and the aforesaid interim orders were recalled. The present complaint attributes another occurrence to the applicants on 23.03.2024, four days after decision of the said appeal. Its maintainability, therefore, cannot be determined merely on the basis of the earlier acquittal. Recall of the orders through which possession had earlier been restored to the complainant did not amount to a finding regarding actual possession of the property on 23.03.2024. Whether the complainant was in lawful possession immediately before the occurrence now alleged and whether the applicants thereafter dispossessed him in the manner asserted in the complaint are matters which require determination on the basis of evidence.

13. The earlier civil litigation also requires to be viewed in its proper context. Muhammad Siddique, predecessor of the applicants, had instituted F.C. Suit No.30 of 2015 seeking, inter alia, declaration and cancellation of the registered sale deed and, in the alternative, recovery of the balance sale consideration. The suit was dismissed vide judgment dated 03.04.2019 and the appeal arising therefrom was also dismissed on 27.08.2021. The registered sale deed relied upon by the complainant, therefore, remains uncanceled. These proceedings form part of the background between the parties but cannot be treated as a final determination of the subsequent dispossession now complained of. The revenue material and the reports called from the Mukhtiarkar and SHO concerned were also before the learned trial Court. Their correctness and evidentiary worth, as well as the rival claims of possession raised by the parties, are matters to be examined in the course of trial and cannot appropriately be finally determined at the stage of cognizance. At this stage, the Court was required only to see whether the complaint, read with the material available, disclosed sufficient ground for proceeding.

14. The scope of revisional jurisdiction is limited. In Khadija Siddiqui and another v. Shah Hussain and another (PLD 2019 Supreme Court

261), the Hon'ble Supreme Court, while explaining the scope of revisional jurisdiction, observed that:

“18.....Apart from that the High Court ought to have appreciated that it was only seized of revision petitions and not an appeal and in exercise of its revisional jurisdiction the High Court ought to have confined itself to correctness, legality, regularity or propriety of the proceedings of the courts below rather than embarking upon a full-fledged reappraisal of the evidence, an exercise fit for appellate jurisdiction.....”

15. The pleas raised by the applicants regarding possession, effect of the previous acquittal, recall of the earlier possession orders and the occurrence dated 23.03.2024 involve disputed questions which cannot appropriately be finally determined while examining an order of cognizance. The respective pleas of the parties shall remain open for consideration by the learned trial Court in accordance with law.

16. In view of the above facts and circumstances, no illegality or material irregularity has been shown in the impugned order dated 01.08.2025 warranting interference in revisional jurisdiction. Consequently, this Criminal Revision Application is **dismissed**, and the impugned order is **maintained**. The learned trial Court shall proceed with the complaint in accordance with law.

J U D G E