

# IN THE HIGH COURT OF SINDH, KARACHI

Criminal Revision Application No. 110 of 2017

Syed Naseem Ahmed.....Applicant.

*V e r s u s*

Mst. Rehana Taj and others.....Respondents.

## **J U D G M E N T**

Date of hearing : 12.07.2018  
 Date of Judgment : 9<sup>th</sup> August, 2018  
 For Applicant : Mr. Rizwan Rasheed, Advocate.  
 Respondent : Mr. Amir Jamil, Advocate for  
 respondent No.2.  
 None for respondents Nos.1,3 & 4  
 For State : Ms. Seema Zaidi, D.P.G.

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**Kausar Sultana Hussain, J:-** This order/judgment aims to dispose of Criminal Revision Application No.110/2017, whereby applicant assailed the Order dated 31.05.2017, passed by the Court of VIth Additional Sessions Judge, Karachi East, in complaint No.31/2017 filed by the applicant/complainant under illegal Dispossession Act 2005.

2. Brief facts of the complaint are that the complainant is tenant of Respondent No.1, Mst. Rehana Taj wd/o, Zaheeruddin resident of House No.B-126, 1<sup>st</sup> floor, Block-18, Gulshan-e-Iqbal, Karachi since 2012, wherefrom applicant/complainant was illegally and unlawfully dispossessed by the Respondent and their accomplices.

3. The Learned VIth Additional Sessions Judge, Karachi (East) dismissed the complaint on the ground that provisions of Illegal Dispossession Act, 2005 are not attracted to the facts of this case and no prima facie offence Under Section 3 of Illegal Dispossession Act is made out against the respondents.

4. There is no denial to the fact that applicant/complainant remained tenant of the Respondents No.2 from 2012 onward; that there was dispute between both the parties and that the respondent No.1 lodged FIR No.03/2017 dated 04.01.2007 against the applicant/complainant at Police Station Aziz Bhatti; that the applicant/complainant was arrested in the said FIR and subsequently released on bail; that on 16.03.2017 due to apprehension of dispossession, the Applicant/Complainant called the police through '15' Help Line; that applicant/complainant sent Money Order bearing No.2421 dated 06.03.2017 of rent amount to Respondent No.1 and upon refusal to accept the said Money Order by her, the applicant/complainant deposited the rent for March 2017 in MRC No.42/2017 with the Learned Rent Controller on 20.03.2017.

5. Sufficient material also placed on record by the applicant/complainant, which give rise to suspicious that the SHO of concerned Police Station was favouring the Respondent No.1 & 2 on the behest of Respondent No.3, which is evident from veracious applications sent to the said SHO through courier service or preferred to IGP on being failure to submit in Police Station personally. This fact also get strength from Roznamcha Entry No.18, dated 10.01.2017, which clearly disclosed the involvement of Qari Usman and Qari Abdullah.

6. So far as maintainability of present case is concerned, I place reliance on 2016 SCMR 1931, wherein a Five Members Bench of Hon'ble Supreme Court of Pakistan in the matter of forcible taking over of possession by the landlord inter-alia hold that:-

“In fact none of the popular terms which are identified with a specific category of offenders have been used anywhere in the Act. As the term ‘property grabbers’ appearing in the preamble of the Act has been used in general sense, it cannot be identified with any particular category of offenders in order to restrict the scope and applicability of the Illegal Dispossession Act, 2005 to a particular category of offences”.

“Thus the provisions of Section 3 clearly demonstrate that whosoever commits the act of illegal dispossession, as described in the Illegal Dispossession Act, 2005 against a lawful owner or a lawful occupier, he can be prosecuted under its provisions without any restriction.”

“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”.

7. In view of the foregoing, it is clear that the present case falls within the ambit of illegal Dispossession Act and the trial Court erred in reaching to the conclusion that the case do not attract the provisions of illegal Dispossession Act 2005. So far as the facts of the case are concerned, it came on record that the SHO of concerned Police Station, in collusion with the Respondent No.3 was favouring the Respondents Nos.1 & 2. In such circumstances, report and investigation of SHO cannot be relied on and it is incumbent to reach at true, factual and just conclusion that a local enquiry is conducted as provided in provision 2 of Section 5 of the said Act. Accordingly it is ordered that Sessions Judge Karachi,

East to nominate a Magistrate to conduct the "local enquiry" into the facts of the case in hand to be completed within three weeks of receipt of this order and subsequently trial of the case be held afresh, which shall be completed within two months of the submission of enquiry report by the Magistrate. With the above observation and orders Cr. Revision Application in hand stand disposed of.

SSI/PA

**J U D G E**