

IN THE HIGH COURT OF SINDH AT KARACHI

**Criminal Appeal No.162 of 2019**

Present: **Mr. Justice Nazar Akbar**

Appellant : Shahid Wahab Siddiqui,  
through Syed Shahzeel Hassan, advocate.

**Versus**

Respondent No.1 : Syed Farhaj Ahmed, through  
Mr. Muhammad Nadeem Memon, advocate.

Respondent No.2 : Learned IVth Addl. District & Sessions  
Judge, South at Karachi.

Respondent No.2 : The State  
Through Ms. Rahat Ahsan, Addl. P.G.

Date of Hearing : **12.06.2020**

Date of Decision : **02.07.2020**

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

**NAZAR AKBAR, J.-** The appellant Shahid Wahab Siddiqui is partly aggrieved by the Judgment dated **12.02.2019**, whereby Criminal Complaint No.941/2017 filed by Respondent No.1/ complainant under **Sections 3 & 4** of the Illegal Dispossession Act, 2005 (ID Act, 2005) was dismissed by the learned IVth Additional District & Sessions Judge, South Karachi and the appellant was acquitted but possession of the subject property, which was taken over from the appellant by order dated **07.05.2015** under **Section 7** of the ID Act, 2005 as an interim relief pending the criminal complaint, was not restored to the appellant.

2. The brief facts of the case are that Respondent No.1/ complainant on **13.03.2015** filed criminal complaint under **Sections 3, 4, 7 & 8** of the ID Act, 2005 which was initially registered as Criminal **Complaint No.22/2015**. His complaint was only against

one **Sarmad Siddiqui** son of not known to him. He has alleged that the said Sarmad Siddiqui in the night of **15.02.2012** broke the locks and illegally occupied the said flat along with his companions. The complainant further alleged that on **06.11.2014** he filed application to Ferozabad Police Station and thereafter on **02.12.2014** he also lodged FIR No.579/2014 under **Sections 448/506-B/468 PPC** at Ferozabad Police Station and challan on the said FIR was filed on **30.01.2015**. The basis for filing the complaint is that he claimed to be owner of flat No.401, 04<sup>th</sup> Floor, Minahil Apartments, admeasuring 1200 sq. ft. on Plot No.764-765, Block-2, Central Commercial Area, P.E.C.H.S, Karachi (the subject flat). He averred that he has purchased the said flat on **07.3.2007** for his residence but the said flat was locked as he wanted to renovate the same.

3. On **23.05.2015** learned Additional Sessions Judge took cognizance of the offence on the basis of police report that the subject flat was found locked, therefore, statement of accused (Sarmad Siddiqui) could not be recorded but two witnesses namely **Faisal Javed** and **Muhammad Farooq** have supported the version of the complainant and issuedailable warrants of the said Sarmad Siddiqui. Then police in compliance ofailable warrants reported that Sarmad Siddiqui has left the subject flat and they have found one **Ashok Kumar** in possession of the subject flat who informed that the said Sarmad Siddiqui has put him in possession. Therefore, on **29.6.2015** learned Additional Sessions Judge ordered that since whereabouts of the accused Sarmad Siddiqui are not traceable, the complainant is directed to file amended title to insert the name of said Ashok Kumar in the complaint and issuedailable warrants of said Ashok Kumar. The complainant on **30.06.2015** filed amended

title and the said Ashok Kumar appeared in Court on the very next date i.e **17.7.2015** and furnished surety bond.

4. In the meanwhile, as the accused Sarmad Siddiqui nominated in criminal complainant No.22/2015 could not be produced by the police, the learned trial Court in a case of Illegal Dispossession Act issued proclamation of arrest of said **Sarmad Siddiqui** and ultimately on **19.01.2016** declared him absconder. Immediately after declaring **Sarmad Siddiqui** absconder, on **04.2.2016** the trial Court framed charge against Ashok Kumar.

5. Then on **11.02.2016** the complainant/ Respondent No.1 filed application under **Section 7** of the ID Act, 2005 which was allowed by order dated **07.5.2016** with direction to said Ashok Kumar to vacate the subject flat in 30 days. Then in execution of the said orders on **25.7.2016** the bailiff of trial Court along with police reached at the subject flat and took over possession of the subject flat from the present appellant **Shahid Siddiqui** and his family and handed over the subject flat to the attorney of the complainant under Court orders.

6. The present appellant after being dispossessed from the subject flat on **25.7.2016** through an order of Court obtained by complainant at his back without notices to him filed an application to be impleaded. The complainant having already taken over possession of the subject flat extended no objection to the said application, therefore, by order dated **29.9.2016** the appellant was impleaded as accused and he was directed to furnish surety. Then the complainant/ Respondent No.1 without amending the criminal complaint filed amended title in which he dropped name of **Ashok**

**Kumar** who was before the Court until then and the name of accused Sarmad Siddiqui who has already been declared absconder on **19.01.2016** was mentioned in the amended title.

7. Soon after dispossession of the appellant under court order and appearance of the appellant, **Ashok Kumar** absconded from the court proceedings from **05.8.2016** and he never turned up. Finally he was declared absconder by the trial Court by order dated **23.01.2017** and this is how only present appellant after having been deprived of possession of subject flat under **Section 7** of the ID Act, 2005 was before the Court though the complainant has never alleged that appellant has illegally dispossessed him at any point of time. Then suddenly the complainant/ Respondent No.1 on **01.2.2017** discovered that accused Sarmad Siddiqui is in jail and filed an application seeking his production.

8. On **07.07.2017** pursuant to letter dated **26.05.2017** sent by MIT-II, the **Criminal Complaint No.22/2015** was transferred from the Court of V-Additional Sessions Judge, East, Karachi to the Court of IVth Additional and Sessions Judge, South, Karachi, therefore, it was renumbered as **Criminal Complaint No.941/2017**.

9. On **19.7.2017** accused Sarmad Siddiqui was produced by the jail authorities and he was provided necessary documents. Then on **07.8.2017** following charge was framed against the accused persons:-

CHARGE

I, Sikandar Ameer Pahore, IVth Additional Sessions Judge, South, Judicial Complex, Jail Road, Karachi, do hereby charge your accused

1. Sarmad Siddiqui S/o Shakeel Siddiqui

2. Shahid Wahab Siddiqui S/o Abdul Wahab Siddiqui

As under:

That on **15.02.2014**, you accused alongwith absconding accused namely Ashok S/o Raju in furtherance of your common intention have illegally occupied the Flat No.401, 4<sup>th</sup> Floor, Minahil Apartment, Plot No.765-764, Block-02, Central Commercial Area, PECHS, Karachi and illegally disposed (dispossessed) the complainant, thereby you have committed an offence punishable under section 3 & 4 of the Illegal Dispossession Act-2005, within the cognizance of this court.

And I do hereby direct you accused to be tried by this court for the above said charges.

10. Both the accused pleaded not guilty. After framing of charge only attorney of the complainant/ Respondent No.1 appeared as witness of dispossession of complainant and he failed to produce any other witness of the offence of illegal dispossession. Even the two witnesses shown in police report namely Faisal Javed S/o Javed and Faoq S/o Sattar did not turn up nor anyone else including the complainant (Farhaj Ahmed) entered in the witness box to support the contents of the complaint.

11. In the statement under **Section 342 Cr.P.C** accused Sarmad Siddiqui denied all the allegations and declared that he has no concern with the property in question. He, however, stated in reply to question No.3 that he was attorney of wife of complainant's attorney before High Court in C.P No.D-488 of 2007. He produced said document as annexure 14(a). The appellant in his statement under **Section 342 Cr.P.C** has produced Power of Attorneys and sale deeds in respect of the subject flat showing his lawful possession.

12. However, the trial Court after hearing learned counsel for the parties, by judgment dated **12.02.2019** acquitted the appellant from the charges under **Section 3 & 4** of the ID Act, 2005 but he has not recalled the order passed under **Section 7** of the ID Act, 2005 during pendency of the criminal complaint whereby the appellant was evicted from the subject flat, therefore, being partly aggrieved the appellant has filed the instant Criminal Appeal. It is worth mentioning here that complainant has not challenged acquittal of the appellant.

13. I have heard learned counsel for the parties and perused the record as well as written arguments submitted by the learned counsel for the parties.

14. The main contention of learned counsel for the appellant was that once the trial Court has held that the appellant was not guilty of the offence of **illegally dispossessing** the complainant, it was mandatory for the learned trial Court to recall the interim order passed under **Section 7** of the ID Act, 2005 and the possession of subject flat should have been restored to the appellant since the appellant has been dispossessed from the subject flat on interim orders during pendency of criminal complaint. He has drawn attention of Court to the bailiff report dated **05.8.2016** annexed with the appeal as annexure P/10. The relevant portion of bailiff's report regarding handing over possession of the subject flat is reproduced below:-

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 مینے با عزت طریقے سے  
 محلہ کہ گواہوں اور پولیس پارٹی اور نویدسرور کی موجودگی میں تمام  
 سامان نکال کر فلیٹ کو خالی کروایا اور خالی قبضہ پٹیشنر کے  
 اٹرنی اعمران رضی احمد کہ حوالے کیا جس نے اپنا قبضہ کیا اور تالے  
 لگائے تمام سامان، قابض لوگ ۱ حشام ۲ شاہد اور طارق ولد عبدالوہاب

صدیقی نے اپنے قبضے میں لیا اور فلیٹ خالی کیا اندر داخل ہوئے اندر  
 دیکھا کہ فلیٹ خالی تھا  
 -----  
 اس طرح عدالت کے حکم کی تعمیل مکمل کی دن کو ۳۰۱۵ بجے  
 کاروائی شروع کی ۵۰۳۰ بجے کاروائی موقع پر ختم کی قابض لوگوں نے  
 -----  
 دستخط کرنے سے صاف انکا

15. Learned counsel for Respondent No.1 has not disputed the fact in his written arguments or otherwise that the appellant has been evicted from the subject flat in execution of the order of the trial Court under **Section 7** of the ID Act, 2005. He has, however, attempted to claim that complainant is owner of the subject flat and the appellant has failed to produce title documents. This contention of counsel for the complainant is outside the scope of Illegal Dispossession Act, 2005. In the case under **Section 3 & 4** of the ID Act, 2005 the complainant has to prove that he has been illegally dispossessed at the hands of the accused party.

16. The learned trial Court has categorically observed in the impugned order that:-

*“It is also evident that the complainant has failed to produce sufficient evidence against the accused facing trial that on the day of incident they were in possession of flat in question or **they illegally dispossessed the complainant** and according to report of SHO that deceased accused possessed the flat in question and it was not established by the complainant during course of evidence.”*

Despite these observations while dismissing the complaint against the appellant and acquitting him, the trial Court has refused to recall the order of interim relief granted to the complainant. The excuse for not recalling the orders under **Section 7** of the ID Act, 2005 was that the complainant has been declared by him as lawful owner.

17. The observations of learned trial Court about ownership of the subject flat despite his knowledge that the Court seized of a case

under ID Act has no jurisdiction to determine title of subject flat or give findings on the authenticity of document is pathetic and unbelievable in view of his own following observations in the impugned judgment itself:-

At this movement I take guidance from the case law reported in 2007 P.Cr.L.J 1920 and PLD 2012 Sindh 390, the Hon'ble Sindh High Court held that scope of illegal Dispossession Act, 2005 is very limited and Court exercising powers U/S 3 of the Act, is competent to give findings only with regard to **Illegal Dispossession** and it is not the function of such Court to decide or adjudicate upon title of the property and to give any finding in regard to the authenticity of documents.

The learned Additional Sessions Judge has consciously mentioned two binding orders of High Court in the impugned judgment quoted above and I reproduce the relevant findings of High Court as under:-

(Rahim Tahir vs. Ahmed Jan and others reported in **2007 P.Cr.L.J 1920**).

The scope of the Act of 2005 is limited and the Court exercising powers under section 3 is not competent to give any finding in regard to the authenticity of a document. The findings pursuant to the Act of 2005 are only confined to illegal dispossession. In the present case the respondent No. 1 claims possession on the basis of alleged tampered documents. The learned Sessions Judge, Karachi (West) was justified in observing that he was not competent to give a finding in regard to tampering of the document as the nature of jurisdiction vested with him under the provision of Act of 2005 and is that of criminal jurisdiction. No Criminal Court, in law, can give a declaration and or finding in regard to the validity of a document whether it was tampered or forged.

Under these circumstances, I am of the considered view that the applicant can only avail his remedy in such a case by approaching a Civil Court of competent jurisdiction and the respondent No.1 who is in possession of the premises claims possession on the basis of certain documents, which exclude jurisdiction of the Sessions Judge under the Act of 2005.



(Gulzar Ali and another vs. Station House Officer, P.S Kandiaro and others reported in **PLD 2012 Sindh 390**).

“----- Under Illegal Dispossession Act, it is not the function or domain 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 subsection (1) and (2) of section 7, but the receiver/custodian was appointed in view of subsection (3) to (5) of section 7.”

Despite above knowledge of law laid down by this Court, the learned Additional Sessions Judge in the impugned judgment wrongly framed point No.1 for determination which is as follows:-

1. Whether the complainant is lawful owner of the disputed property/ Flat No.401, 04<sup>th</sup> Floor, Minahil Apartments, admeasuring 1200 Sq. ft. of covered Area, P./E.C.H.S., Karachi, on the day mentioned in the complaint?

And then on the basis of defective and inadmissible evidence in the case if illegal dispossession he made the following declaration about ownership as under:-

“The complainant (has) established that he is real owner of the property in question, therefore, the property in question was already handed over to him vide order dated **07.5.2015**”.

In view of the case law quoted by the learned Judge in the impugned judgment the above order whereby he declared ownership of subject flat in criminal complaint under **Section 3 & 4** of the ID Act, 2005 and refused to recall the interim order passed under **Section 7** of the ID Act, 2005 is patently violation of **Article 201** of the Constitution of Islamic Republic of Pakistan, 1973, it reads as under:-

**201. Decision of High Court binding on subordinate courts.**—Subject to Article 189, any decision of a High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it.

18. The Additional Sessions Judge while seized of a criminal case under **Section 3 & 4** of the ID Act, 2005 assumed the role of civil court of original jurisdiction and decreed suit not only for mere declaration of ownership under **Section 42** of the Specific Relief Act but also granted consequential relief of possession to the detriment of appellant in exercising of power conferred on him under **Section 7** of the ID Act 2005 despite the fact that offence of illegal dispossession against the appellant was not proved. The perusal of impugned judgment shows that even the illegal and uncalled for declaration of ownership by the learned trial Court while exercising power under **Section 3 & 4** of the ID Act, 2005 was devoid of any evidence. The complainant has examined only his attorney and he has failed to produce any witness in support of his claim that he has been illegally dispossessed from the subject flat. Even the so-called witnesses said to have been mentioned in the police report dated **31.03.2015** namely **Faisal Javed** S/o Javed and **Muhammad Farooq** S/o Sattar were not examined by the complainant nor he has produced any other witness in support of his claim. Then on whose evidence the learned trial Court concluded that complainant has established that he is real owner of the property in question. The complaint was filed by one **Syed Farhaj Ali** and even said Syed Farhaj Ali has not appeared in Court to state on oath that he has been dispossessed from the subject flat as direct evidence to prove alleged commission of offence under **Section 3 & 4** of the ID Act, 2005. When the principal has not come in the witness box to prove his title of ownership and illegal dispossession from the subject flat by the appellant, then how the evidence of sole attorney in a criminal case could be considered sufficient for declaration of ownership of the subject flat. The learned

Additional Sessions Judge failed to appreciate that ownership/title of immovable property on the basis of documents has to be proved in terms of **Section 79** of Qanun-e-Shahadat Order, 1984 and in the case in hand neither the beneficiary of the title document namely **Syed Farhaj Ali** (the complainant) has appeared in witness box nor the attesting witnesses of the title documents have appeared.

19. The appellant prior to his statement under **Section 342 Cr.P.C** has also filed an application under **Section 9** of the ID Act, 2005 under **Section 476 Cr.P.C** read with 193, 196, 205, 209 & 219 PPC. The complainant/ respondent No.1 has filed his objection to the said application. The documents filed by the appellant along with his application under **Section 9** of the ID Act, 2005 as well as his statement under **Section 342 Cr.P.C** have been totally ignored by the trial Court. In all these documents address of appellant and his family is shown to be the subject flat and these documents are:-

- i. Copy of Applications U/O 1 rule 10 of CPC filed by the complainant and his attorney to become party in Civil Suit No.665/2015 for specific performance of contract in respect of subject flat.
- ii. Copy of C.P No.1477/2015 filed by mother of the applicant before the Hon'ble High Court of Sindh at Karachi along with its order and comments of SHO PS Ferozabad.
- iii. Direct Complaint No.88/2015 before the Special Judge, Anti-Corruption, Sindh at Karachi was filed after 7 months of filing of instant complaint under **Section 3 & 4** of the ID Act, 2005.
- iv. General Power of Sub-Attorneys.
- v. Utility bills of the subject flat showing continuous possession of the appellant.

The record does not show that any order has been passed by the learned Additional Sessions Judge on the said application.

20. Beside the above illegality in the impugned judgment, the refusal of the trial Court to recall the order under **Section 7** of the ID Act, 2005 was contrary to the well settled principle of law that the interim order passed during the trail/proceedings stand merged in the final order. The very heading of **Section 7** of the ID Act, 2005 is “vacation and mode of recovery as **interim relief**”. When the order under **Section 7** of the ID Act, 2005 is an interim relief then how interim orders be given perpetuity at the time of dismissing the complaint under **Sections 3 and 4** of the ID Act, 2005. The meaning of the words “ad interim or “interim” or “temporary” has been explained by the Hon'ble Supreme Court in the case of Federation of Pakistan through Secretary, M/O Interior vs. General (R) Pervez Musharraf and others reported in **PLD 2016 SC 570** in the following terms:-

13. Admittedly, order dated 08.04.2013 was passed before issuing notice of the petitions to Respondent No.1 and it was ad-interim or to say it interim or temporary in nature. The words 'ad-interim' and 'interim' have been defined in Black's Law Dictionary (9th Edition) as under:

"ad interim: In the meantime; temporarily."

"interim: Done, made, or occurring for an intervening time; temporary or provisional."

From the above connotation of these two words, it is safely deducible that the above referred order, for all intent and purposes, was a temporary order, which stood merged/vacated in terms of the final order dated 03.07.2013.

A Division Bench of Lahore High Court In the case of Mansab Ali vs. Suleman and 7 others reported in **PLJ 2008 Lahore 300** has held as under:-

11. We agree with the learned Single Bench. Under Section 7 of the Act order can be passed for a temporary relief during the pendency of the

main case. If the main case was allowed to have been withdrawn, there was no justification for the interim order/relief to continue which was granted only on the basis of pendency of the main case/ complaint. We also agree with the observation of the learned Single Bench orders dated 28.10.2006 and 31.10.2006 of the learned A.S.J. prejudiced the case of the respondents of proving their right, hence they suffered for an act of the Court/addl. Sessions Judge. Even otherwise in the presence of the order of learned Single Bench dated 30.10.2006 how the learned A.S.J. could pass order dated 31.10.2006?. For the reasons, noted above, this appeal is dismissed and the impugned order of the learned Single Bench dated 22.3.2007 is upheld.

In the case of Mst. Khalida Bibi and another vs. Additional Sessions Judge, Lahore and 7 others reported in **2008 P.Cr.L.J 141**, single bench of Lahore High Court has observed as under:-

6. Interim relief was granted by the learned Additional Sessions Judge under section 7 of the Illegal Dispossession Act, 2005; during the pendency of the complaint before him. Since the learned Additional Sessions Judge found the complaint non-maintainable, in view of the judgment rendered by learned Full Bench of this Court; automatically position which prevailed prior to filing the complaint stood restored. The learned Additional Sessions Judge, failed to apply his mind in this regard. He should have restored the possession to the present petitioners which he had handed over to the complainant (respondent No.2) while exercising jurisdiction which did not vest in him as the complaint was not maintainable. Therefore, the moment he held that complaint was not maintainable and dismissed the same, the interim order also ceased to exist.

21. The only logical conclusion of the above narration of facts and law from the impugned judgment is that the learned Additional Sessions Judge (**Mr. Sikandar Ameer Pahore**) has not applied even his common sense to any of the facts before him. The common sense does not approve the proposition that a beneficiary of interim order during the trial of his complaint even after dismissal of his complaint can continue to enjoy the fruits of interim order obtained by him in a

dubious manner. The appellant has been deprived of possession of the subject flat without notice as the record shows the order dated **07.05.2016** under **Section 7** of ID Act, 2005 was passed prior to his induction in the complaint under **Section 3 & 4** of the ID Act, 2005 which was pending since **13.03.2015**. The treatment of facts and law and even the application of Qanun-e-Shahadat Order, 1984 to evaluate evidence by the learned Additional Sessions Judge was improper, unfair and illogical. Therefore, while rectifying the illegality in the impugned order whereby the trial Court even on dismissal of criminal complaint under **Section 3 & 4** of ID Act has refused to reverse its order under **Section 7** of the ID Act, 2005, I am constrained to fill a proforma reflecting on the performance of the learned Additional Sessions Judge **Mr. Sikandar Ameer Pahore**. It may be mentioned here that in **November, 2015** Hon'ble **Mr. Justice Sajjad Ali Shah**, Chief Justice of High Court of Sindh (as he then was) has been pleased to direct all the Judges of this Court that in case the Judges seized of Appeals/ Revisions find grave irregularities in the judgments they may record their observations on the quality of the Orders/ Judgments by filling a proforma provided to the Judges through the Registrar. Such proforma duly filled is sent to the Registrar.

22. Consequently, this Criminal Appeal is allowed and the Nazir of this Court is directed to ensure that the appellant, who was not even nominated by the complainant in his complaint for illegally dispossessing the owner or his attorney from the subject flat, should be put in possession of flat No.401, 04<sup>th</sup> Floor, Minahil Apartments, admeasuring 1200 sq. ft. on Plot No.764-765, Block-2, Central Commercial Area, P.E.C.H.S, Karachi within **48 hours**. In case of

locks on the subject flat, the Nazir is allowed to break open the locks if the premises is found locked and in case of any resistance, if needed, he may also seek police aid without any fresh orders in this regard.

JUDGE

Karachi, Dated: 02.07.2020

Ayaz Gul