

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Revision Application No. S- 191 of 2021

Applicants	Inamuddin son of Ikramuddin & 4 others through Mr. Syed Hamad Ali Shah, Advocate.
Respondents	Ikramuddin son of Muhammad Khan & 6 others through Mr. Muhammad Arshad S. Pathan, Advocate. Mr. Fayaz Hussain Sabki, A.P.G.
Dates of hearing	17.01.2022 and 28.01.2022
Date of judgment	14.02.2022

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ORDER

SHAMSUDDIN ABBASI, J:-By means of this Criminal Revision Application filed under Section 435 and 439 read with Section 561-A, Cr.P.C., the applicants have prayed for following reliefs:-

- (A) *To call for the Record and Proceedings of the learned lower courts and after its examination and scrutiny as to its legality, validity, propriety and correctness, and hearing the parties at length, allow the revision, set aside the impugned decisions and dismiss the complaint of the respondent No.1.*
- (B) *Interim orders are solicited whereby suspending the operation and implementation of the impugned decisions till final decision of the case.*
- (C) *Costs of the revision may be saddled upon the respondents.*
- (D) *Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the applicants”.*

2. The facts giving rise to this criminal revision application, briefly stated, are that a complaint under Section 3, 4, 5, 6 and 7 of Protection of Parents Ordinance, 2021, was filed by the respondent No.1 (complainant) against applicants contending therein that he and his wife Mst. Gulshan are old and infirm persons of 80 and 70 years of age respectively and reside at the ground floor of House No.334/A, Unit No.5, Latifabad, Hyderabad, which is owned by him and his brother Gulfam Arif. The applicants are the son, daughter-in-law, grandsons and granddaughter of respondent No.1 (complainant), who maltreated and misbehaved the parents (respondent

No.1 and his wife). They also used abusive language, become disobedient and did not pay any respect to them. The respondent No.1 (complainant) and his wife tolerated all cruelties of conduct, disobedience and misbehavior with the hope that applicants will mend their ways, but to no avail, hence the respondent No.1 "AAK" Inamuddin (applicant No.1) from his movable and immovable properties and also got published a news in daily newspapers "Nawa-e-Waqt" dated 22.05.2015 and daily "Sooba" whereupon the applicants become more aggressive and made the life of respondent No.1 (complainant), his wife and other inmates of the house miserable. They in collusion with Incharge House Officer of P.S. "B" Section, Hyderabad, SHO Zulfiqar Arain and ASI Muhammad Faisal Arain started business of contraband substance, hired security guards and valuable vehicles and got the respondents No.1 and other inmates of the house hostage through goonda elements. It was on 24.07.2021 the applicant No.3 closed the main entrance gate of the respondents No.1's house and parked his vehicle in front of main gate and when the respondent No.1 and other inmates of the house resisted, the applicant No.3 slapped Mst. Gulshan (complainant's wife), dragged her to the gate, sat on her chest and then all applicants beaten her, however, she was saved by her another son Faisal Khan. Meanwhile, applicant No.3 took out pistol and made straight fire on Faisal Khan, but luckily he remained safe. The wife of complainant suffered serious injuries and became paralyzed due to breakage of her hands, leg and backbone. Due to such acts of applicants, the respondent No.1 visited P.S. "B" Section for registration of FIR, but he was kept on false hopes and finally on application to AIG and SSP, the SHO of P.S. "B" Section registered a case vide FIR No.82 of 2021, but extended undue favour to the applicants by leaving so many lacunas in the case. Despite registration of FIR, the applicants with the help of local police are continuously extending threats of killing and involvement of respondents No.1 (complainant) and other inmates of the house in false narcotic cases and reluctant to vacate the house despite repeated requests. The respondent No.1 (complainant), therefore, filed a complaint seeking protection of their lives and restoration of possession of his house with the following prayer:-

- a) *That this Honourable Court may be pleased to issue directions to respondents No.1 to 5 U/S 3, 4, 4(2) of Parents Protection Ordinance 2021, to vacate the house of complainant i.e. House No.334/A, Unit No.5, Latifabad, Hyderabad, in case of failure,*

this Honourable Court may be pleased to issue directions to respondents No.6 to 9 i.e. Superintendent Officer of police Hyderabad, Major General Rangers/DO Ranger Sindh at Karachi, Chief Rangers Head Quarter Sindh, at Hyderabad, Station House Officer of Police Section "B" Section, Latifabad, Hyderabad, to vacate the house of complainant from respondents No.1 to 5 and also punished them in accordance with law.

b) Any other relief which this Honourable Court deems fit and proper be also awarded to the applicant".

3. Notices were issued to the applicants, but they choose to remain absent. A report was also called from Director Land HMC Latifabad, which established that respondent No.1 (complainant), Gulfam Arif and Mst. Zahida are the lawful owners of the said house. Therefore, by an order dated 08.09.2021, the Deputy Commissioner, Hyderabad, allowed the complaint ordering applicants to vacate the said house within seven days in terms of Section 5 of Protection of Parents Ordinance, 2021. A direction in terms of Section 7 of the said Ordinance was also given to Senior Superintendent of Police, Hyderabad, and SHO P.S. "B" Section to get the house vacated and restored its possession to respondent No.1 (complainant).

4. Feeling aggrieved by the order of Deputy Commissioner, Hyderabad, dated 08.09.2021, the applicants filed appeal (Appeal No.01 of 2021) mainly agitating that the order is bad in law and facts, which is an act of favoritism on the part of Deputy Commissioner; that complaint was filed just to harass and restrain them from initiating criminal proceedings against respondent No.1 (complainant) for which they already obtained an order from the Court of competent jurisdiction for lodgment of FIR against respondent No.1 (complainant); that the impugned judgment is the result of misreading and non-reading of relevant law and without application of a judicial mind and based on erroneous findings, hence the same is not sustainable in law and liable to be set-aside.

5. The appeal fails and the order of Deputy Commissioner, Hyderabad, was upheld vide judgment dated 15.11.2021, penned down by the learned Additional District Judge-III, Hyderabad, which necessitated the filing of this criminal revision application.

6. It is contended on behalf of the applicants that the impugned judgment and order passed by both the forums are bad in law and facts, without appreciating the material on record in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of law and arrived at a wrong conclusion in allowing the complainant acting upon the material put forward by the respondent No.1 (complainant) and ignoring the neutral appreciation of whole record. Per him, the Protection of Parents Ordinance, 2021, is not applicable to any province after 18th amendment; that the said Ordinance has not been approved by National Assembly or Senate within stipulated time of four months and after lapse of such period, it has no value in the eyes of law. Next submitted that FIR No.82 of 2021 was lodged, on the same set of allegations, as raised in the subsequent complaint, hence it is a case of double jeopardy.

7. The learned counsel for the respondent No.1 (complainant) has supported the impugned judgment and order and submitted that the same are in accordance with law and call for no interference. The learned APG also submitted that the impugned judgment and order are based on proper application of judicial mind to the facts and circumstances of the case and no interference is called-for.

8. Heard and perused the record minutely.

9. Applicants before this court are the son, daughter-in-law, grandsons and granddaughter of Ikramuddin (respondent No.1/complainant), who misbehaved and maltreated their parents. Protection of Parents Ordinance, 2021 (hereinafter referred to as Ordinance of 2021) was promulgated to provide protection to parents at the hands of their children. Here, I am not in agreement with the learned counsel for the applicants that Ordinance, 2021 was not applicable as it was not approved either by National Assembly or Senate within a specified period. Suffice to observe that the Ordinance, 2021 was promulgated on 19.05.2021 and the incident had taken place on 24.07.2021, which is within four months of promulgation of the Ordinance 2021. It is, thus, made clear that the incident occurred when the Ordinance, 2021 was in field and very much applicable to the case of the respondent No.1 (complainant). Mere fact

that the Ordinance was not approved and lapsed upon expiry of four months from the date of its promulgation does not create any title to withheld such a right that had been obtained on promulgation of the Ordinance, 2021 more particularly when the incident occurred in existence of the Ordinance, 2021. Having held that Ordinance, 2021 was in field and applied to the case of respondent No.1 (complainant), I would not proceed to examine the legality of the judgment and order, impugned herein, on the touchstone of the said lapsed law.

10. As to the plea of double jeopardy questioning the complaint as illegal in view of FIR previously lodged in respect of the same offence is concerned, suffice to observe FIR No.82 of 2021 was lodged by respondent No.1 (complainant) on 26.07.2021 against Inamuddin, Naveed, Haseeb Ali, Noshaba and others, who are applicants herein, stating therein that due to act of disobedience, misbehavior and maltreatment he had executed "AAKNAMA" dated 19.05.2015 depriving his son Inamuddin from his movable and immovable properties and for this reason his son, daughter-in-law, grandsons and granddaughter became annoyed and forcibly occupied his house, duly armed with weapons. He repeatedly asked them to vacate his house whereupon the accused extended threats of dire consequences. It was on 24.07.2021 when the accused attacked upon the complainant, his wife and other inmates of the house, made firings with intention to kill and also gave severe beatings, resultantly both arms and one leg of his wife were broken. The accused also took away the mobile phone of complainant's son Faisal Ikram Khan while leaving the place of incident. During investigation the I.O. collected sufficient material including CCTV footage, which led to filing a challan wherein cognizance has been taken by a Court of competent jurisdiction. The complainant, on the other hand, relates to protection and vacation of the house belonging to the respondent No.1 (complainant), ownership whereof has neither been denied nor disputed. A report of Director Land HMC Latifabad, has also been placed on record showing respondent No.1 (complainant), Gulfam Arif and Mst. Zahida as lawful owners of the said house.

11. Reviewing the contents of FIR and complaint, it is noted that the facts and story narrated therein are different. The crime reported in the FIR relates to causing injuries and firing with intention to kill, which was investigated thoroughly and charge sheeted based upon the material

collected during investigation, which is a criminal trial, whereas the complaint confined only to protection and possession of house and does not include criminal act as narrated in the FIR. It is a well settled that scheme of criminal law is altogether different from civil proceedings and both can be carried out simultaneously. Reliance may well be made to the case of *Seema Fareed and others v The State and another* (2008 SCMR 839) the Hon'ble Supreme Court held as under:-

"It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction."

I am, therefore, of the view that the acts committed by the applicant are different, therefore, principle of double jeopardy would not come into force. Thus, the contention of the applicants that it is a case of double jeopardy is misconceived and unsafe to rely upon.

12. For what has been discussed above, I am of the view that judgment and order, impugned herein, are based on proper application of judicial mind to the facts and circumstances of the case, hence calls for no interference by this Court. The learned counsel for the applicants also failed to point out any material illegality or serious infirmity committed by the learned Additional District Judge-III and learned Deputy Commissioner, Hyderabad, while passing the impugned judgment and order. In view thereof, this Criminal Revision Application is bereft of merit stands dismissed.

JUDGE